**BEFORE THE FEDERAL ELECTION COMMISSION**

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) **MUR 7100**
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**RESPONSE OF DONALD J. TRUMP, DONALD J. TRUMP FOR PRESIDENT, INC. AND TIMOTHY JOST, AS TREASURER, TO THE COMPLAINT**

By and through undersigned counsel, Donald J. Trump, Donald J. Trump for President, Inc., (the "Committee") and Timothy Jost, as Treasurer (collectively, "Respondents") respond to the Complaint in the above-captioned MUR. We respectfully request that the Commission find there is no reason to believe a violation has occurred, dismiss the complaint, and close the file.

## I. BACKGROUND

This matter arises from a complaint filed by Brad Woodhouse and the American Democracy Legal Fund. Brad Woodhouse also heads Correct the Record—a Super PAC which provides services to the Clinton campaign as its "strategic research and rapid response team designed to defend Hillary Clinton," and subject to a FEC complaint of its own. And American Democracy Legal Fund is one part of a cluster of organizations that function as a *de facto* private wing of the Democratic Party and their nominee for President.

Donald J. Trump is the Republican nominee for President of the United States. He is not a career politician—in fact, this is his first run for any elected office—instead, Mr. Trump is a highly successful businessman with a recognized brand that also happens to bear his name. Although this arrangement is somewhat novel with respect to Presidential nominees in modern times, it is not uncommon in down-ballot races, and it is well-established that a candidate need not separate himself completely from his business in order to run for Federal office. Despite this well-settled principle, this complaint stitches together a number of intersections between Mr.

Trump as a candidate and his ongoing business interests with a number of falsehoods about both the law and facts into a political hit piece designed to imply that Mr. Trump is profiting from the campaign. But in the end, the hit piece is just that, and as a complaint, it fails to allege any violation of the Federal Election Campaign Act of 1971, as amended (the "Act") or Federal Election Commission ("Commission") regulations.

Though the complaint cites a number of news articles regarding a number of unrelated events over a span of time, this complaint really only makes one legal allegation—that the campaign has used its funds in a manner that constitutes impermissible personal use by Mr. Trump. But this allegation does not withstand even basic scrutiny. The complaint, at various points: (1) attempts to style as a violation the Committee's payment for goods and services as affirmatively required by law; (2) essentially proposes a ban on speech during the campaign that may theoretically relate to a candidate's business interests, even when it is in response to criticisms by opponents; and (3) claims various business trips and events to be impermissible campaign expenses when they were in fact paid for by the business. Accordingly, the Commission should find there is no reason to believe a violation has occurred, dismiss the complaint, and close the file.

## II. ANALYSIS

The complaint cites a litany of news coverage to suggest that Mr. Trump is profiting off his campaign.[1] The complainant indicates that various alleged activities, about which complainant expresses much outrage, boil down to a few categories: (1) Mr. Trump allegedly promotes his brands or business interests in campaign events; (2) Mr. Trump discusses or

[1] To add rhetorical flourish, the complainants include a quote from 2000 which says nothing about converting campaign funds to personal use. Tellingly, the complaint fails to emphasize that the quote was from 2000.

references business matters in the course of the campaign; (3) Mr. Trump has held events that promote his businesses during the course of the campaign; and (4) the Committee has paid businesses related to Mr. Trump with campaign funds. None of these allegations, however, actually amount to a violation of law.

Despite the false narrative the complaint has woven, the only allegation the complaint makes that Mr. Trump or his Committee violated the law is based on the prohibition about personal use of campaign funds. "Personal use means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 C.F.R § 113.1(g). Accordingly, personal use requires a "use of funds" for something that "would exist irrespective of" the campaign. *Id.* A further examination of each category of alleged activity, however, reveals that each either does not involve the use of campaign funds, involves an expense that does not exist "irrespective" of the campaign, or is based on a false depiction of the facts. In the end, the complaint fails to allege a violation of the Act or Commission regulations.

**A. Mr. Trump's touting his business successes in the course of the campaign, even when accompanied by the use of props, is not a violation of the Act because it does not put campaign resources to personal use.**

The complaint alleges that a press conference that included references to and items regarding Mr. Trump's business success is a violation of the prohibition of using campaign funds for personal use. But this is not such a violation for two reasons: (1) doing so was not a "use of campaign funds" and so cannot be a personal use thereof; and (2) the references to Mr. Trump's business success were merely responding to a major issue in the campaign and criticism by Mr. Trump's opponents.

First, the complaint does not allege, nor could it, that Mr. Trump's discussion of business successes or use of props to do so constitutes a "use of campaign funds," let alone one that would exist irrespective of the campaign. On March 8, 2016—the day of the complained-of news conference—four states held primary contests that day and the Committee, as is standard practice in presidential primaries, staged a press event that evening to continue presenting the case for Mr. Trump's candidacy. Certainly, the costs of holding such an event are properly campaign costs.[2] There is no allegation that discussing or showing off a business success in the course of making a case for Mr. Trump's candidacy for President incurred any costs whatsoever,[3] and so there can be no issue with personal use of campaign funds.

Further, Complaint fails to disclose the obvious campaign circumstances under which the press conference was held. It was on the evening of several primaries, three of which Mr. Trump won. In the lead up to these elections, opponents attempted to make Mr. Trump's business ventures an issue. After all, Mr. Trump is a businessman. The successes that have formed the basis for his biography and qualifications are in the business sphere, and his political opponents have attempted to use his business dealings against him. At the time of the press conference, political opponents had repeatedly made a campaign issue out of Mr. Trump's business dealings, especially related to Trump Steaks and Trump University, among others.[4] Those same

[2] As is the case with many of the other allegations, had any other entity paid for such costs, the complaint would have claimed that it was an impermissible in-kind to the Committee for campaign expenses.

[3] The complaint apparently ignores this fact and instead acts as if Mr. Trump has paid to market commercial products, which is simply not the case. Complainant's cite to AO 2011-02 (Brown) regarding books is inapposite. Paid advertisements to promote a candidate's book are not what is at issue here. Here, unlike book ads, which in most instances represent specific disbursements of additional campaign funds, no additional campaign funds were used. More on point in this context, the Advisory Opinion never indicated that Senator Brown would be prohibited from discussing his book on the stump, only using campaign funds to advertise it.

[4] For example, Mitt Romney asked the week before: "And what ever happened to Trump Airlines? How about Trump University? And then there's Trump Magazine and Trump Vodka and Trump Steaks, and Trump Mortgage? A business genius he is not." Leigh Ann Caldwell, *Mitt Romney Lays Out Scathing Critique of Donald Trump*, NBC News (March 3, 2016). Marco Rubio, in a debate leading up to the March 8 primaries asked: "Ever heard of

opponents openly speculated that Mr. Trump's businesses were not as successful as they seemed. The campaign's press conference occurred in the context of political opponents making a campaign issue out of Mr. Trump's businesses, so his pointing to his business successes on the stump makes perfect sense. Use of products as examples of business successes in the campaign is not somehow doing an "infomercial" or "promoting" those products as the complainants contend, but rather citing and showing examples of the successes Mr. Trump could bring to elected office in the course of a campaign. That Mr. Trump was able to interject humor by making a farce of his political opponents' attacks must have frustrated them even more.

**B. The campaign's or candidate's discussion of or response to media inquiries on matters of public record and public discussion in the course of the campaign involving Mr. Trump's business interests is not an expenditure of funds and therefore is not a violation of the Act.**

Complainants further contend that discussing matters of public record, specifically discussing a federal judge in a lawsuit with a Trump-related entity, is somehow also a violation of the Act in the form of personal use of campaign funds. But again, complainants fail to allege a violation of the law. Like with the previous issue, complainant does not allege that campaign funds were used for an expense that would exist irrespective of the campaign. Rather, the complaint alleges that merely discussing an issue at a campaign event—or even more far-fetched, in the course of a media interview—somehow constitutes a personal use of campaign funds.

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Trump steak or Trump vodka? Take a look at Trump steaks. Trump steaks is gone. You have ruined these companies." Lauren Fox, *Trump Calls Rubio 'Little Marco' As GOP Debate Goes Off The Rails*, Talking Points Memo (March 3, 2016).

Critically, the subject of the remarks was a case that had become a campaign issue raised by opponents to criticize the candidate's business dealings. Even setting that aside,[5] the Act and Commission regulations do not and cannot impose a gag order on Federal candidates discussing business dealings in the campaign or prevent candidates from discussing issues in the public forum. Devoting a small portion of a stump speech, responding to a media inquiry in an interview, or otherwise speaking about what had become a public issue does not implicate the use of campaign funds. And more importantly, the topics a candidate chooses to discuss in the course of his campaign are far beyond the Act's or Commission's jurisdiction to scrutinize or second-guess and doing so would be an unconstitutional restraint on speech. *See Buckley v. Valeo* 424 U.S. 1 (1976) (striking spending limits). A candidate speaking, responding to criticisms, or answering questions from the media simply does not amount to a violation.

### C. Mr. Trump's holding business events during the election cycle is not a use of campaign funds and is not a violation.

For this category of allegations, the complaint cites a March 21 press conference outside the Trump International Hotel in Washington, DC, and a grand reopening of a Trump resort and golf course in Turnberry, Scotland as evidence of personal use of campaign funds. Complainant explains that "artist's renderings of his hotel" flanked a podium that read "Trump Hotels" at the Washington press conference, and that Mr. Trump attended a "ribbon cutting" "to promote the renovations to his resort" in Scotland. The complainant even goes so far to say that "[t]hese promotional and marketing events are activities that the Trump Organization should be

[5] Complainant is well aware that these things are campaign issues. Complainant's other entity, Correct the Record, has repeatedly made issue of them in the course of advocating for their favored candidate. *See, e.g.*, Trump University: "Total Lie," "Con," "Scheme," "Facade," "Scam," Correct the Record, http://correctrecord.org/trump-university-total-lie-con-scheme-facade-scam/.

conducting; they are not 'in connection with the campaign' but rather events in connection with Mr. Trump's business interests."

Respondents could not agree more. The reason the Washington press conference used Trump Hotels signage was because it was a Trump Hotels event. In fact, both events were Trump Organization events, paid for by the Trump Organization and organized by the Trump Organization to benefit Trump Organization entities. Therefore, they do not represent a personal use of campaign funds and are not a violation.

Merely because a candidate conducts business during an election or because the press covers an event in the context of the campaign does not mean a candidate is prohibited from doing it, nor does it convert such an event to a campaign event. Mr. Trump is not only the Republican nominee for President of the United States, he is the head of a business conglomerate with ongoing operations. Though this is not the typical arrangement for presidential candidates in the modern era, nothing in Federal election laws prohibits such an arrangement and, in fact, dozens of similarly situated individuals regularly run for U.S. House or Senate in an attempt to serve their communities as elected officials. Commission regulations and precedent reflect this reality. *See, e.g.*, 11 C.F.R. § 114.15(b)(3)(B) (providing safe harbor from Electioneering Communications for communications that propose a commercial transaction); Advisory Opinion 2004-31 (Darrow) (determining that advertisements for car dealership bearing the candidate's name are not electioneering communications or coordinated with the candidate); MUR 6013 (Teahen) (dismissing complaint regarding long-running business advertising). The ongoing activities cited in the complaint—grand openings, business press conferences, and the like—are commonplace in business, were routinely done long before and will continue long after the campaign and completing any public service, and need not cease merely because the head of that

business runs for Federal office. That those activities, when conducted in the middle of an election cycle, gain press attention from political media likewise does not convert them into campaign events, nor does the limelight of candidacy that accompanies Mr. Trump no matter where he goes mean that campaign funds are being utilized for business purposes.[6] In this, too, the complaint fails to allege a violation of the Act or Commission regulations.

**D. The Campaign's payment of expenses to Trump-owned businesses for services provided to the campaign, to Trump family members for the reimbursement of travel expenses, and for the other purposes raised in the complaint are proper uses of campaign funds affirmatively required by law, not a violation of it.**

The complaint attempts to allege that payments to Trump-related entities are somehow a violation of the Act. In reality, the Act and Commission regulations and precedents clearly *require* the campaign to pay normal and usual rates for the use of these entities. *See* 100.52(d)(1) ("Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution."). Accordingly, the use of campaign funds to pay for campaign events, travel and lodging, and other similar campaign uses are a permissible use of campaign funds. *See* 52 U.S.C. §30114(a) ("A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual-(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual."). Similarly, it is not a violation of election law to choose to use one vendor over another.

[6] The complaint implies that since the Turnburry event was listed on the campaign website to alert the media, it was a campaign event, but noting a non-campaign event on a public schedule does not convert it to a campaign event. It is merely common practice to advise the media of the candidate's public appearances and arrange for press attendance in an organized manner. It is not a practice that involves expending campaign funds.

Campaigns have "wide discretion" over what to spend their funds and there is no obligation not to use facilities in which one has an interest—only to pay the normal and usual rate.

*1. Expenditures for use of a candidate-owned private plane are proper campaign expenditures required by Commission regulations.*

Commission regulations specifically lay out the amount that must be paid for the use of a candidate-owned plane. *See* 11 C.F.R. §100.93(g) ("For non-commercial travel by a candidate, or a person traveling on behalf of a candidate, on an aircraft owned or leased by that candidate or an immediate family member of that candidate, the candidate's authorized committee must pay: . . . the *pro rata* share per campaign traveler of the costs associated with the trip. Associated costs include, but are not limited to, the cost of fuel and crew, and a proportionate share of maintenance costs."). In other words, the very aircraft expenditures the complaint attempts to allege are a violation are affirmatively required by Commission regulations for the use of a candidate-owned aircraft in connection with the campaign.

2. *Reimbursement payments to a family member are proper campaign expenditures required by Commission regulations.*

The complaint also includes in its fact section (though tellingly not in its legal discussion) expenditures made to reimburse Trump family members for travel costs, insinuating that such reimbursements are inappropriate. To the contrary, Commission regulations affirmatively characterize family travel expenses for campaign-related activities as campaign expenditures. *See* 11 C.F.R. § 106.4(c)(2) ("Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities"); 60 Fed. Reg. 7862, 7866 (Feb. 9, 1995) ["Personal Use E&J"] (treating even salary payments to family members for *bona fide* services as proper campaign expenditures since "family members should be treated the same as other members of the campaign staff."). Payments to a candidate's

family member for campaign travel expense reimbursements are a proper use of campaign funds, not a violation.

*3. Payments to Trump-related vendors for event space and lodging are proper campaign expenditures required by Commission regulations.*

The Committee's use of vendors and facilities for event space, lodging, catering, merchandise, and campaign office space—and payment for the use of such services—for campaign activities are all proper uses of campaign funds. The Commission's "long-standing opinion" is that "candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use." Personal Use E&J at 7867. Since such expenses would not exist irrespective of the campaign, they do not constitute personal use. 11 C.F.R. § 113.1(g). In fact, all are directly campaign related.

Tellingly, Complainant does not allege that the expenditures were made for personal use and even recognizes that "Mr. Trump and his family are not precluded from receiving rental fees from the Committee for its use of their properties." Further, the complaint does not allege any facts that indicate or even remotely suggest that the Committee's payments exceed the usual and normal rate for such expenses. Complainant, without citing any statute, regulation, or Commission precedent, merely calls for Commission "scrutiny" because of the "proportion" of campaign funds spent with Trump-related vendors.[7] But there is no obligation for the Committee to avoid using any Trump-related entities for services, nor is there an obligation to

[7] Complaint attempts to make much over Mr. Trump's self-funding, and that he "pays himself" for the use of his own business entities. This is not only permissible but required by the Act. Mr. Trump's in-kind contributions disclosed to the campaign have indeed included personal expenditures to Trump-related entities to pay for campaign uses of such entities' goods, services, and personnel—all of which are done per the Act and Commission regulations. In fact, Mr. Trump has largely self-funded his campaign, and continues to do so, and since funds contributed by Mr. Trump far exceed the campaign's disbursements to Trump-related entities, any claim of "profiteering" is easily refuted.

spend a certain proportion of campaign funds on any given thing. The Commission's role is not to broadly "scrutinize" campaign practices, but rather only to determine at this point whether there is reason to believe a violation of the Act has occurred. *See, e.g.*, MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5 ("The Complaint and other available information in the record do not provide information sufficient to establish [a violation]."); MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2 ("Unwarranted legal conclusions from asserted facts will not be accepted as true."). There is no basis for a reason to believe in connection with these allegations.

While the complainant is free to make political points in support of its favored candidate about such expenditures, a complaint to the Federal Election Commission is not the appropriate place to do so—these expenditures, like the previous allegations, are clearly not a violation of the Act and the Commission should find no reason to believe, the complaint should be dismissed, and the file closed.

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